

**CENTERS FOR MEDICARE AND MEDICAID SERVICES
Hearing Officer Decision**

In the Matter of:

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Universal Care, Inc.,

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Docket No.

2017-4 MA/PD

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**Denial of Service Area Expansion:
Medicare Advantage Organization
Medicare Advantage-Prescription Drug**

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**Contract Year 2018
Contract Nos. H0838**

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I. ISSUE

Whether the Centers for Medicare & Medicaid Services (“CMS”) 2017 contract denial, based on Universal Care’s (“Universal”) failure to file a doing-business-filing (“d/b/a”) for Fresno County, was proper.

II. HOLDING

Universal has proven, by a preponderance of the evidence, that CMS’ ultimate determination was inconsistent with the controlling authorities which includes a review and feedback mechanism. CMS generally relayed that there was no d/b/a filing for Fresno County, although more precisely, the filing was submitted but unexecuted. While plans maintain the responsibility to file proper and timely documentation to meet CMS’ requirements, in this instance, the wording of the feedback misdirected Universal’s efforts to rectify its application.

III. STATEMENT OF APPLICATION PROCESS AND APPLICABLE AUTHORITY

The Social Security Act authorizes CMS to enter into contracts with entities seeking to offer Part C and Part D benefits to Medicare beneficiaries. CMS has the regulatory authority to set the form and manner for the submission of applications for qualification as a Medicare Advantage Organization (“MAO”). Specifically, CMS requires entities seeking to contract as a MAO to submit applications through the Health Plan Management System (“HPMS”). The HPMS generated application requires that the applicant prove through attestations and supporting documentation that it meet certain requirements. MAOs must demonstrate that they meet qualifications ranging from appropriate state licensure, sufficient administrative capability to oversee the plan offerings, the capacity to enroll and disenroll beneficiaries, and an ability to offer

sufficient medical services to their enrollees. 42 C.F.R. § 422.501.

When applying to contract with CMS as a MAO, 42 C.F.R § 422.400 requires MAOs to be licensed under state law as a risk bearing entity eligible to offer health insurance or benefits coverage. Section 3.3 of the HPMS generated application addresses licensure requirements. The application requires a MAO to upload into the HPMS state approval when the MAO is d/b/a or conducting business under a name that differs from the name shown on the Articles of Incorporation. *See* CMS Memorandum and Motion for Summary Judgment, Ex. C.

When evaluating applications, “CMS evaluates an application for a MA contract ... solely on the basis of information contained in the application itself and any additional information that CMS obtains through other means such as on site visits.” 42 C.F.R. § 422.502(a)(1). CMS reviews the application, submitted through HPMS, to determine whether it meets all the necessary requirements. 42 C.F.R. § 422.502(a)(2). If CMS determines that the application is not correct or complete a letter is sent notifying the plan of the deficiency and specifying a date by which the deficiencies are to be cured. If an applicant fails to remedy all of the deficiencies in its application by the specified date, or if CMS determines that the plan is not able to meet the requirements to become a MAO in the requested service area, then CMS issues a Notice of Intent to Deny (“NOID”). 42 C.F.R. § 422.502(c)(2)(i). The NOID contains a summary of the basis for CMS’ preliminary finding. An applicant that receives a NOID is provided ten days from the date of notice to respond, in writing, to CMS’ preliminary findings and to revise its application remedying any defects that CMS has identified. 42 C.F.R. § 422.502(c)(2)(ii). If an applicant fails to submit a revised application within ten days from the date of the NOID issuance, or CMS believes that a revised application fails to meet the necessary requirements to contract as a MAO in the requested service area, CMS denies the application.

In the final rule regarding the MA/PD applications procedure, and how it will assist plans in their understanding of deficiency notices, CMS stated,

All application communications include contact information for CMS subject matter specialists. We are always willing to work with applicants to ensure a complete understanding of program and contracting requirements.

75 Fed. Reg. 19678, 19683 (April 15, 2010).

To this end, in its Deficiency Letters and NOIDs CMS provides a CMS contact and phone number stating that “[i]f you have any questions about the deficiencies noted above please reach out to your CMS point of contact...” Universal Brief, Ex. 2.

Applicants that receive an application denial may request a hearing within fifteen calendar days after the receipt of the denial 42 C.F.R. § 422.502(c)(2)(iii) .

IV. PROCEDURAL HISTORY AND STATEMENT OF FACTS

Universal is a privately held health plan that has been offering MAOs and special needs plans (“SNP”) since 1985. Universal currently operates in six counties in the State of California and has an estimated enrollment of 13,000 members. Starting in 2007, Universal operated its MAOs under the d/b/a of HMO California. In 2010 Universal changed its d/b/a to Brand New Day. Tr. at 13, 14.

On February 15, 2017, Universal submitted a Service Area Expansion (“SAE”) application to expand its MA/PD and SNP operations into six additional California counties. As part of the application, Universal notified CMS of the change in its d/b/a and included d/b/a filings for existing counties. On March 3, 2017, Universal received a deficiency notice regarding, among other things, an issue with its State licensure. The notice stated,

Approval for DBA – You attested that your organization is operating under a name that differs from that listed under your Articles of Incorporation, but you failed to provide the appropriate documentation for State approval for the d/b/a.

Universal Brief and Memorandum in Opposition to CMS’s Motion for summary Judgment, Ex. 2.¹

On March 3, 2017, Universal submitted d/b/a filings for all of its existing counties as well as the counties in which it sought to expand with the exception of Kings County. Universal inadvertently uploaded an unexecuted copy of the d/b/a/ filing for Fresno County. Universal Brief at 3 and Ex. 3.

On April 17, 2017, CMS issued a NOID to Universal which restated CMS’ March 3, 2017 d/b/a deficiency language, quoted above. Universal Brief, Ex. 4. Universal was notified that it had ten days to cure the deficiency. Believing that there was “no filing” for an expansion county, on April 19, 2017, it uploaded the documentation that it believed would cure the deficiency. Universal requested a conference call with CMS to discuss the matter. Universal, Ex. E. In response to the

¹ The March 3 letter also contained the following additional text: “you failed to show the State’s approval is applicable to all portions of your service area”. This deficiency language was omitted in the April 17, 2017 NOID, and the May 24, 2017 denial. CMSD indicated that this text was duplicative and not significant Tr.98.

conference request, CMS requested a list of the persons attending the conference as well as the list of questions to be addressed. Universal followed up sending the list of questions. Regarding the State Licensure, Universal wrote,

We have submitted everything that State requires of an entity for a Fictitious Business Name (FBN) for a d/b/a. We have submitted the following:

- a. FBN filing for each county in which we will operate with the d/b/a.
- b. Newspaper ad in each county in which we will operate with the d/b/a.
- c. State Certification form, signed by the Senior Examiner of the California Department of Managed Health Care (DMHC). The certification form has on it a list of all counties in the service area, and our Legal Entity name and the d/b/a name (as required on the form).

Only “a” and “b” above are required by the State of California. There is no State Approval of d/b/a’s.

Were these documents all received and reviewed?
What else could be provided to satisfy the issue?

We think possibly the reviewers did not understand the laws of our State so we have asked our attorney to draft a letter clarifying the laws of California. His letter will be submitted as a cover letter and will include the citations and laws of California regarding requirements for Fictitious Business Names.

On April 21, 2017, the teleconference between CMS and Universal took place. At the hearing, the CMS witness stated that she recalls informing Universal that there was “no filing” for Fresno County. Tr. 81. The CMS witness explained that in answering Universal’s questions, she relayed the “no filing” summary written by the initial application reviewer regarding Fresno County. Tr. 86-87.

Following the teleconference with CMS, believing that there was no filing regarding Fresno County, Universal resubmitted all of the documents in an attempt to be certain that all required documents were submitted. Tr. 33. However, Universal’s final submission inadvertently omitted a filing for Fresno County. Universal Brief at 4-5.

On May 24, 2017, CMS denied the application for failure to provide the d/b/a documentation. Universal Ex. 8. Within the hearing materials, United provided the signed and current d/b/a for Fresno County that has been in Universal's possession since 2013 (Universal Ex 9).

VI. DECISION

Universal has proven by a preponderance of the evidence that CMS' ultimate determination was inconsistent with the controlling authority, which includes a review and feedback mechanism.

The denial language in the initial deficiency notice was general as it simply indicated that Universal failed to provide the appropriate information to Universal regarding its State approval for d/b/a/. In response to receiving the NOID, Universal contacted CMS to discuss how to cure its application deficiencies. CMS informed the Plan that there was "no filing" for the d/b/a documentation for Fresno County. However, in more precise terms, the documentation was provided to CMS but it was not executed. During the hearing, the CMS witness explained that she relayed that there was "no filing" because such summary was entered in the computer system by the initial application reviewer.

The Hearing Officers find that Universal complied with CMS in attempting to reach out for assistance and the wording of the feedback misdirected Universal's efforts to rectify its application. If CMS had communicated that the d/b/a documenting for Fresno County was unexecuted rather than not filed (which may suggest the form is completely missing from CMS's system) it is likely that Universal would have been certain to locate and submit the executed document that was in its possession since 2013.



Benjamin R. Cohen, Esq.
CMS Hearing Officer



Diana K. Hobbs, Esq.
CMS Hearing Officer

Date: July 24, 2017